

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

The Woodlands, Texas

THE WOODLANDS FIRE DEPARTMENT

Employer

and

Case No. 16-UC-202

THE WOODLANDS PROFESSIONAL FIRE
FIGHTERS ASSOCIATION LOCAL 3846

Petitioner

DECISION AND ORDER

The Petitioner seeks to clarify the existing bargaining unit to include the positions of Fire Battalion Chiefs, Fire Communications Operators, and Fire Communications Supervisor. The Petitioner contends that the Fire Battalion Chiefs are not supervisors within the meaning of Section 2(11) of the Act and therefore should be included in the existing bargaining unit. The Petitioner contends that Fire Communications Operators and the Fire Communications Supervisor provide communications and dispatching services for the Employer. As those employees are not covered under any collective bargaining unit, the Petitioner seeks to include them in the existing bargaining unit. Based on an administrative investigation, I conclude that the petition should be dismissed. I find that the supervisory status of the Fire Battalion Chiefs was decided in 16-RC-10129 and the instant petition was untimely filed.

Under Section 3(b) of the Act, I have the authority to decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this case, I find:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹

2. The Employer is party to a collective bargaining agreement with the Petitioner, the term of which is January 1, 2003 to December 31, 2005. It recognizes the Union as the representative of “. . .all full and part-time paid employees in the unit certified by the National Labor Relations Board in Case No. 16-RC-10129.”

The Union contends that the Fire Battalion Chiefs should be included in the bargaining unit. On July 19, 1999, the Petitioner filed 16-RC-10129. The status of the Battalion Chiefs was in dispute at that time as the Employer contended they should be excluded from the bargaining unit as supervisors and the Petitioner contended they should not be excluded because they were not supervisors. A hearing was held at which the sole issue was the supervisory status of the Battalion Chiefs. Decision and Direction of Election issued on August 5, 1999, in which the Acting Regional Director found the Battalion Chiefs to be supervisors within the meaning of the Act and excluded them from the bargaining unit. On July 8, 1999, in Case 16-RC-10129, the Region issued a Certification of Representative certifying the Union as the collective bargaining representative of all full and/or part-time State-certified firefighter employees employed by the Employer excluding all clerical staff and dispatchers, administrative and managerial employees, guards and supervisors as defined in the Act. The parties then negotiated the current collective bargaining agreement.

Since the Certification of Representative issued, the parties agree that the duties and responsibilities of the Fire Battalion Chiefs have not changed. As the Acting

¹ The Employer, The Woodlands Fire Department, is a Texas corporation with a place of business at The Woodlands, Texas, where it is engaged in the business of providing fire fighting and emergency medical services. During the past twelve months, a representative period, the Employer, in the course and conduct of its business operations, received gross revenues in excess of \$1,000,000 from the performance of the services specified above. During the same period of time, the Employer purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Texas.

Regional Director previously ruled on the supervisory status, I will not reconsider their supervisory status in the absence of new evidence.

The parties are in agreement that the Fire Communications Operators are dispatchers. The Fire Communications Supervisor oversees the work of the dispatchers. Dispatchers were specifically excluded from the bargaining unit by stipulation of the parties in 16-RC-10129. Consequently, dispatchers did not vote in the election held in 16-RC-10129. The Certification of Representative in 16-RC-10129 and the current collective bargaining agreement specifically exclude dispatchers. Where classifications existed at the time of certification and those employees did not have an opportunity to participate in an election, a question concerning representation is raised as to their bargaining unit status and a petition to clarify will be dismissed. **Gould-National Batteries, Inc.**, 157 NLRB 679 (1966); **Bendix Corp.**, 168 NLRB 371 (1968); **AMF Inc.**; 193 NLRB 1113 (1971); **International Silver Co.**, 203 NLRB 221 (1973).

Since the Certification of Representative issued, the parties agree that the duties performed by the Fire Communications Operators and Fire Communications Supervisor have not changed. The Petitioner did not reserve the right to seek inclusion of those classifications during negotiations for the current contract. The Board will refuse to clarify a contract in midterm where the objective is to change the contractually agreed-upon unit by including or excluding employees. **Edison Sault Electric Co.**, 313 NLRB 753 (1994).

On the basis of the foregoing and the entire file in this case, I conclude that the petition should be dismissed. As set forth above, the Acting Regional Director concluded that the Fire Battalion Chiefs are supervisors and excluded from the bargaining unit. No evidence has been offered that their duties have changed. The Fire Communications Operators and Fire Communications Supervisor are specifically excluded from the unit in the current collective bargaining agreement and did not have an opportunity to vote in the election in 16-RC-10129. Further, the Petitioner has offered no evidence of recent or

substantial changes in the duties and responsibilities of the individuals occupying the positions of Fire Battalion Chiefs, Fire Communications Operators, or Fire Communications Supervisor and did not reserve the right to seek the inclusion of those classifications during negotiations. In these circumstances, the petition for unit clarification is untimely. For these reasons, it would be disruptive to the collective bargaining process and inappropriate to process the petition seeking to include the Fire Battalion Chiefs, Fire Communications Operators, and Fire Communications Supervisor, as it would undermine the established bargaining relationship between the Employer and the Petitioner. Accordingly, I shall dismiss the petition herein.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.²

Signed at Fort Worth, Texas, this 12th day of May 2003.

/s/ Curtis A. Wells

CURTIS A. WELLS, Regional Director
NLRB Region 16

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street NW, Washington, DC 20570. This request must be received by the Board in Washington by **May 27, 2003**.